

MEMORANDUM ENDORSED

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/10/20

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
By: JENNIFER JUDE
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2663
Fax: (212) 637-2686
Email: jennifer.jude@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADHIKAAR and THE NEW YORK
IMMIGRATION COALITION,

Plaintiffs,

- against -

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES, UNITED
STATES DEPARTMENT OF STATE, and
UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendants.

No. 19 Civ. 5881 (GHW)

U.S. DEPARTMENT OF STATE'S UNOPPOSED MOTION TO STAY PROCEEDINGS

Defendant U.S. Department of State ("State"), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby moves for a 60-day stay of the proceedings in this case and an extension of State's deadlines to process and produce documents responsive to Plaintiffs' Freedom of Information Act ("FOIA") request due to the major adverse impact of COVID-19 on the FOIA processing functions of State. Pursuant to the Court's Order dated December 4, 2019, Dkt. No. 41, State has been processing potentially

responsive records at a rate of 400 pages per month and made releases of records to Plaintiffs on December 19, 2019, January 21, 2020, February 19, 2020, and March 18, 2020.¹ State's next release deadline is April 20, 2020, and the parties have a joint status letter due tomorrow, April 10, 2020. *See id.* Undersigned counsel has conferred with Plaintiffs' counsel, who does not oppose this request.

In support of this motion, State submits the attached Declaration of Eric F. Stein ("Stein Decl."), Director of the Office of Information Programs and Services ("IPS"). In response to the COVID-19 pandemic, State has been implementing guidelines issued by the Office of Personal Management and Office of Management and Budget to protect its employees and their communities during this national emergency. Stein Decl. ¶¶ 5-9. IPS employs retired Foreign Service Officers ("REAs") to review and process documents in response to FOIA requests, and the REAs are an indispensable part of the FOIA litigation process. *Id.* ¶¶ 10-11. At this time, REAs are no longer able to access their offices for two reasons. First, the processing of FOIA cases is not deemed a mission-critical function. *Id.* ¶ 12. Second, since the REAs are retired Foreign Service Officers, many of them are within the age groups identified by the Centers for Disease Control as being at higher risk for serious illness from COVID-19. *Id.* Consequently, State has paused the scheduling of all REAs working in the department's offices effective March 19, 2020. *Id.*

¹ The Court's December 2, 2019 Order also directed Defendant U.S. Immigration and Customs Enforcement ("ICE") (the only other defendant in this case who had not yet completed its response to Plaintiffs' FOIA request) to process records at a rate of 600 pages per month and make monthly releases on the same schedule as State. Dkt. No. 41. ICE has since completed its rolling productions except for documents it has referred to other agencies for their review or for which it requires consultation with other agencies. This motion does not request a stay or any other relief on behalf of ICE or any defendant other than State.

Although REAs are telework eligible, very few REAs are telework-ready at this time. *Id.* ¶ 13. Furthermore, even if the REAs were telework ready, they would be unable to advance any work on this case because potentially responsive documents reside in a document review system that is operated exclusively on a classified computer network that cannot be accessed via telework or offsite. *Id.* ¶¶ 13-15. Although State is in the process of transferring cases to a new document review platform, cases that are currently in the original system, like this case, will continue to be processed on a classified network after the transfer. *Id.* ¶¶ 16-17.

This litigation is impacted by the measures State has undertaken to protect the community from COVID-19. As explained above, State is unable to continue processing and producing documents in this case until the REAs are able to return to work after the COVID-19 pandemic resolves. *See id.* ¶ 21.

Therefore, because of its significantly diminished capacity to process FOIA requests, State moves for a 60-day stay of the proceedings in this case, including its monthly deadlines to process and release documents responsive to Plaintiffs' FOIA request. State respectfully proposes that the parties file a joint status report on June 9, 2020, with a status on the resumption of State's normal FOIA operations and a proposed schedule for the resumption of processing Plaintiffs' FOIA request, if appropriate.

Date: New York, New York
April 9, 2020

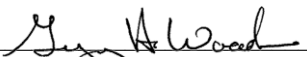
GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: JENNIFER JUDE
/s/ Jennifer Jude
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2663
Fax: (212) 637-2686
Email: jennifer.jude@usdoj.gov
Attorney for Defendants

Application granted. This case is stayed with respect to Defendant U.S. Department of State, including its monthly deadlines to process and release documents to Plaintiff. The parties are directed to submit a joint status letter to the Court no later than June 9, 2020.

SO ORDERED.

Dated: April 10, 2020



GREGORY H. WOODS
United States District Judge